

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 889**

**Introduced by Assembly Member Ruskin  
(Coauthors: Assembly Members Koretz and Negrete McLeod)**

February 18, 2005

---

An act to amend ~~Section 12240, and to repeal Section~~ *Sections 12015.3, 12015.5, 12240, and 12246* of the Business and Professions Code, relating to weights and measures.

LEGISLATIVE COUNSEL'S DIGEST

AB 889, as amended, Ruskin. Weights and measures.

*Existing law, until January 1, 2006, provides that the State Sealer, county sealers and their deputies and inspectors may level a civil penalty against a person for violating provisions of law relating to weights and measures, as specified. Existing law also provides that any person convicted or determined to be civilly liable for violating these provisions shall be liable for costs incurred in investigating the action, as specified.*

*This bill would provide that provisions that allow sealers to impose civil penalties would remain in effect. This bill would also specify that no investigative costs shall be imposed for violations of these provisions in which civil penalties are imposed.*

Existing law, until January 1, 2006, permits the board of supervisors of a county to charge an annual device registration fee to recover the costs of inspecting or testing weighing and measuring devices by the county sealer not to exceed those fees specified in a table of maximum annual charges. Existing law provides that these provisions shall remain in effect only until January 1, 2006.

This bill would provide that these provisions would remain in effect until January 1, 2011, however, it would also revise and recast the annual registration fees that may be charged by generally setting forth fees but only in blank amounts, as specified. *This bill would provide that the annual registration fee would consist of a business location fee and a per device fee. This bill would set forth various device fees and would also provide that fees shall graduate from \$60 for the location fee and 60% of the maximum applicable device fee specified, until January 1, 2008, at which time the location fee shall be \$100, and the device fee shall be 100% of the fees specified in these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12015.3 of the Business and Professions  
2     Code is amended to read:  
3     12015.3. (a) The sealer may levy a civil penalty against a  
4     person violating any provision of this division or a regulation  
5     adopted pursuant to any of these provisions, of not more than one  
6     thousand dollars (\$1,000) for each violation. It is a complete  
7     defense to a criminal prosecution for a violation of any provision  
8     of this division or a regulation adopted pursuant to any provision  
9     of this division that the defendant has been assessed and has paid  
10    a civil penalty under this section for the same act or acts  
11    constituting the violation. Any civil penalty under this section  
12    shall be cumulative to civil remedies or penalties imposed under  
13    any other law.  
14    (b) Before a civil penalty is levied, the person charged with the  
15    violation shall be given a written notice of the proposed action  
16    including the nature of the violation and the amount of the  
17    proposed penalty, and shall have the right to request a hearing.  
18    The request shall be made within 20 days after receiving notice  
19    of the proposed action. A notice of the proposed action that is  
20    sent by certified mail to the last known address of the person  
21    charged shall be considered received even if delivery is refused  
22    or the notice is not accepted at that address. If a hearing is  
23    requested, notice of the time and place of the hearing shall be  
24    given at least 10 days before the date set for the hearing. At the

1 hearing, the person shall be given an opportunity to review the  
2 sealer's evidence and to present evidence on his or her own  
3 behalf. If a hearing is not timely requested, the sealer may take  
4 the action proposed without a hearing.

5 (c) If the person upon whom the sealer levied a civil penalty  
6 requested and appeared at a hearing, the person may appeal the  
7 sealer's decision to the secretary within 30 days of the date of  
8 receiving a copy of the sealer's decision. The following  
9 procedures apply to the appeal:

10 (1) The appeal shall be in writing and signed by the appellant  
11 or his or her authorized agent, state the grounds for the appeal,  
12 and include a copy of the sealer's decision. The appellant shall  
13 file a copy of the appeal with the sealer at the same time it is filed  
14 with the secretary.

15 (2) The appellant and the sealer may, at the time of filing the  
16 appeal or within 10 days thereafter or at a later time prescribed  
17 by the secretary, present the record of the hearing including  
18 written evidence that was submitted at the hearing and a written  
19 argument to the secretary stating grounds for affirming,  
20 modifying, or reversing the sealer's decision.

21 (3) The secretary may grant oral arguments upon application  
22 made at the time written arguments are filed.

23 (4) If an application to present an oral argument is granted,  
24 written notice of the time and place for the oral argument shall be  
25 given at least 10 days before the date set therefor. The times may  
26 be altered by mutual agreement of the appellant, the sealer, and  
27 the secretary.

28 (5) The secretary shall decide the appeal on the record of the  
29 hearing, including the written evidence and the written argument  
30 described in paragraph (2), that he or she has received. If the  
31 secretary finds substantial evidence in the record to support the  
32 sealer's decision, the secretary shall affirm the decision.

33 (6) The secretary shall render a written decision within 45  
34 days of the date of appeal or within 15 days of the date of oral  
35 arguments or as soon thereafter as practical.

36 (7) On an appeal pursuant to this section, the secretary may  
37 affirm the sealer's decision, modify the sealer's decision by  
38 reducing or increasing the amount of the penalty levied so that it  
39 is within the secretary's guidelines for imposing civil penalties,  
40 or reverse the sealer's decision. Any civil penalty increased by

1 the secretary shall not be higher than that proposed in the sealer's  
2 notice of proposed action given pursuant to subdivision (b). A  
3 copy of the secretary's decision shall be delivered or mailed to  
4 the appellant and the sealer.

5 (8) Any person who does not request a hearing pursuant to  
6 subdivision (b) may not file an appeal pursuant to this  
7 subdivision.

8 (9) Review of a decision of the secretary may be sought by the  
9 appellant within 30 days of the date of the decision pursuant to  
10 Section 1094.5 of the Code of Civil Procedure.

11 (d) After the exhaustion of the appeal and review procedures  
12 provided in this section, the sealer, or his or her representative,  
13 may file a certified copy of a final decision of the sealer that  
14 directs the payment of a civil penalty and, if applicable, a copy of  
15 any decision of the secretary or his or her authorized  
16 representative rendered on an appeal from the sealer's decision  
17 and a copy of any order that denies a petition for a writ of  
18 administrative mandamus, with the clerk of the superior court of  
19 any county. Judgment shall be entered immediately by the clerk  
20 in conformity with the decision or order. No fees shall be  
21 charged by the clerk of the superior court for the performance of  
22 any official service required in connection with the entry of  
23 judgment pursuant to this section.

24 (e) If the civil penalty is levied by the State Sealer, the  
25 revenues derived therefrom shall be deposited in the Department  
26 of Food and Agriculture Fund and, upon appropriation, shall be  
27 used by the State Sealer to carry out his or her responsibilities  
28 under this division. If the civil penalty is levied by the county  
29 sealer, the revenues shall be deposited in the general fund of the  
30 county and, upon appropriation by the board of supervisors, shall  
31 be used by the county sealer to carry out his or her  
32 responsibilities under this division.

33 (f) This section does not apply to violations involving utility  
34 meters, or to violations involving the testing and inspection of  
35 utility meters, in mobilehome parks, recreational vehicle parks,  
36 or apartment complexes, where the owner of the park or complex  
37 owns and is responsible for the utility meters.

38 (g) Upon the written request of the Attorney General of  
39 California, any district attorney, or any city prosecutor or city  
40 attorney described in subdivision (a) of Section 17206, the State

1 Sealer or the county sealer within their respective jurisdictions,  
2 shall provide all reports and records regarding any actions that  
3 occurred within the four months prior to the date of the written  
4 request in which civil penalties were levied pursuant to this  
5 section or liability for costs incurred are determined pursuant to  
6 Section 12015.5.

7 ~~(h) This section shall remain in effect only until January 1,~~  
8 ~~2006, and as of that date is repealed, unless a later enacted statute~~  
9 ~~that is enacted before January 1, 2006, deletes or extends that~~  
10 ~~date. No investigative costs shall be imposed pursuant to Section~~  
11 ~~12015.5 for violations for which civil penalties are imposed~~  
12 ~~pursuant to this section.~~

13 *SEC. 2. Section 12015.5 of the Business and Professions*  
14 *Code is amended to read:*

15 12015.5. Any person convicted of violating any of the  
16 provisions of this division, or, except as provided in Section  
17 ~~12028~~ 12015.3, any person who is determined to be civilly liable  
18 for violating any of the provisions of this division, shall be liable  
19 for reasonable costs incurred in investigating the action.

20 **SECTION 1.**

21 *SEC. 3. Section 12240 of the Business and Professions Code*  
22 *is amended to read:*

23 12240. (a) Except as otherwise provided in this section, the  
24 board of supervisors, by ordinance, may charge an annual device  
25 registration fee, not to exceed the county's total cost of actually  
26 inspecting or testing the devices as required by law, to recover  
27 the costs of inspecting or testing weighing and measuring devices  
28 required of the county sealer pursuant to Section 12210, and to  
29 recover the cost of carrying out Section 12211.

30 (b) Except as otherwise provided in this section, the device  
31 registration fee shall not exceed the amount set forth in  
32 ~~subdivision (f)~~ subdivisions (f) to (n), inclusive.

33 (c) The county may collect the fees biennially, in which case  
34 they shall not exceed twice the amount of an annual fee. The  
35 ordinance shall be adopted pursuant to Article 7 (commencing  
36 with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title  
37 2 of the Government Code.

38 (d) Retail gasoline pump meters, for which the above fees are  
39 assessed, shall be inspected as frequently as required by  
40 regulation, but not less than once every two years.

(e) Livestock scales, animal scales and scales used primarily for weighing feed and seed, for which the above fees are assessed, shall be inspected as frequently as required by regulation.

~~(f) The annual registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) per location and a fee of up to \_\_\_\_\_ dollars (\$\_\_\_\_\_) per device. For the purposes of this section, each vehicle containing one or more commercial devices is considered a single location.~~

*(f) The annual registration fee for a business that uses a commercial weighing or measuring device or devices shall consist of a business location fee, and a per device fee, as specified in subdivisions (g) to (n), inclusive. The business location fee and per device fee shall not exceed the following:*

*(1) Beginning January 1, 2006, sixty dollars (\$60) per business location, plus 60 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.*

*(2) Beginning January 1, 2007, eighty dollars (\$80) per business location, plus 80 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.*

*(3) Beginning January 1, 2008, and thereafter, one hundred dollars (\$100) per business location, plus 100 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.*

(g) For marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner of the marina, park, or complex owns and is responsible for the utility meters, ~~the annual registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) per marina, park, or complex, and a fee of up to a fee not to exceed~~ two dollars (\$2) per device per space or apartment. Marinas, mobilehome parks, recreational vehicle parks, and apartment complexes for which the above fees are assessed shall be inspected and tested as frequently as required by regulation.

(h) For weighing devices, other than livestock and motor truck scales, with capacities of ~~20,000~~ 10,000 pounds or greater, the annual device registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) per location and a fee of up to \_\_\_\_\_ dollars (\$\_\_\_\_\_) per device.

~~(i) For motor truck scales, the annual registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) per location and a fee of up to \_\_\_\_\_ dollars (\$\_\_\_\_\_) per device. two hundred fifty dollars (\$250) per~~

device; for weighing devices, other than livestock scales, with capacities of at least 2,000 pounds but less than 10,000 pounds, the annual device registration fee shall not exceed one hundred fifty dollars (\$150) per device.

(j)

(i) This section does not apply to farm milk tanks.

(k)

(j) A scale or device used in a certified farmers' market, as defined by Section 113745 of the Health and Safety Code, is not required to be registered in the county where the market is conducted, if the scale or device has an unexpired seal for the current year, issued by a licensed California county sealer.

(l)

(k) For livestock scales with capacities of 10,000 pounds or more greater, the annual device registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_) one hundred fifty dollars (\$150) per device; for livestock scales with capacities of at least 2,000 pounds but less than 10,000 pounds, the annual device registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_) one hundred dollars (\$100) per location and a fee of up to \_\_\_\_\_ dollars (\$\_\_\_\_), except that the fee for not more than three devices at a single location shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_) device.

(m)

(l) For liquified petroleum gas (LPG) meters, truck mounted or stationary, the annual registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_) per location and a fee of up to \_\_\_\_\_ dollars (\$\_\_\_\_) per device; one hundred seventy-five dollars (\$175) per device.

(n)

(m) For wholesale and vehicle meters, the annual device registration fee shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_) per location and a fee of \_\_\_\_\_ dollars (\$\_\_\_\_) twenty-five dollars (\$25) per device.

(n) For all other commercial weighing or measuring devices not listed in subdivisions (g) to (m), inclusive, the annual device registration fee shall not exceed twenty dollars (\$20) per device. For the purposes of this section, each vehicle containing one or more commercial devices is considered a single business location.

1     ~~SEC. 2. Section 12246 of the Business and Professions Code~~  
2     ~~is repealed.~~

3     *SEC. 4. Section 12246 of the Business and Professions Code*  
4     *is amended to read:*

5     12246. This article shall remain in effect only until January 1,  
6     2006 2011, and as of that date is repealed, unless a later enacted  
7     statute that is enacted before January 1, 2006 2011, deletes or  
8     extends that date.

O